

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
ELDORADO AREA WATER AND SANITATION DISTRICT AND THE BOARD OF
COUNTY COMMISSIONERS OF SANTA FE COUNTY REGARDING MUTUAL
WATER SERVICES COOPERATION**

The Eldorado Area Water and Sanitation District, a political subdivision of the State of New Mexico ("District"), and the Board of County Commissioners of Santa Fe County, a political subdivision of the State of New Mexico ("County"), enter into this Memorandum of Understanding this 9th day of October, 2012.

RECITALS

WHEREAS, the District has rights and responsibilities specified by Law, specifically the Water and Sanitation District Act (NMSA 1978, Section 73-21-1 *et seq.*) and operates a water utility supplying water to its customers within the boundaries of the area served by the District, as shown on Exhibit "A" attached hereto and incorporated herein by reference (the District's "Service Area");

WHEREAS, the County, through its Utility Division, operates a water utility whose principal source of supply is the Buckman Direct Diversion, a joint project of the County and the City of Santa Fe;

WHEREAS, the County, through its Land Use Division, administers the New Mexico Subdivision Act, the Zoning Enabling Act, the Santa Fe County Growth Management Plan (SGMP), and the Santa Fe County Land Development Code (LDC);

WHEREAS, the County and the District share a number of important shared goals, including providing safe water to citizens, providing fire protection, sponsoring water conservation and reuse practices, and providing healthy wastewater management;

WHEREAS, consistent with these shared goals, the County, through its Utility Division, is willing to assist the District from time to time to improve the reliability of the District's system in times of drought or mechanical failure or as otherwise agreed to by the parties by providing access to water supplies from the Buckman Direct Diversion or from any other sources;

WHEREAS, the County's statutory duty through the Subdivision Act, the Zoning Enabling Act, the Santa Fe County Growth Management Plan, and the Santa Fe County Land Development Code is to assure that proposed development within the County is consistent with statutory requirements and with the LDC, and specifically to assure that a 99-year water supply exists for any proposed development within the County's land use jurisdiction;

WHEREAS, the County acknowledges that the District's sources of water supply are more than adequate at the present time to serve its customers, and also acknowledges Partial Licenses No. RG-18529 and 18556 issued by the Office of the State Engineer and the acknowledgement in those Licenses that the District has available to it 783.43 acre feet per year of water rights with which to supply customers, and further acknowledges that the County's

water experts have thoroughly reviewed the District's sources of supply in connection with recent applications to develop property and have agreed with the District that more than adequate water resources currently exist to serve existing customers and to serve new developments within the District's service area;

WHEREAS, from time to time, disagreements have arisen between the County and the District concerning the District's inherent authority under the Water and Sanitation District Act and the County's functions under the New Mexico Subdivision Act, the Zoning Enabling Act, the Santa Fe County Growth Management Plan, and the Santa Fe County Land Development Code, and it is desirable that the County and District work to reduce conflicts in the future in a way that is consistent with the County's statutory obligations, but in a way that fully respects the District's status as a political subdivision of the State and an independent public utility accountable to the voters;

WHEREAS, a constructive way to assure progress on all of these objectives is for the County to agree that the District has provided sufficient present information concerning the District's water supply to justify the County's acceptance of a 'will serve' letter from the District that the District is ready, willing and able to provide a customer with water service as adequate for purposes of the Subdivision Act, the Zoning Enabling Act, the Santa Fe County Growth Management Plan, and the Santa Fe County Land Development Code for a minimum of three (3) years, and for the County and the District to agree to work towards providing the District with water from the Buckman Direct Diversion project or other sources as available to assist the District in times of drought or mechanical failure or as otherwise agreed by the parties;

WHEREAS, the parties find that it is in their mutual best interest to avoid misunderstanding and disagreement over the areas to be served by each party, and wish to define a mechanism for deciding whether potential customers outside of the District's current Service Area boundaries will be served by the District or the County;

WHEREAS, the County and District are amenable to making such an agreement and to agreeing to work towards a stronger relationship in subsequent agreements so that these and other issues vital to the health, safety and welfare of the community are effectively addressed.

IT IS THEREFORE UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. The County recognizes and understands that the District is a Water and Sanitation District duly organized and existing under the Water and Sanitation District Act, with all the powers, authorities, rights and responsibilities specified therein, and the County recognizes the right of the District under the Water and Sanitation District Act to supply water to existing and new customers and to supply new development within its Service Area boundaries. The County agrees that it will not extend its water facilities into the District's Service Area without the prior written approval of the District.
2. With respect to the previous paragraph, the parties recognize that the County has statutory responsibilities with respect to such new development within the District's

Service Area boundaries. In furtherance of the continued cooperation between the District and the County concerning the District's capacity to provide service to new customers, the County agrees that the information provided by the District concerning the adequacy of its water supply is such that, for a minimum of three (3) years from the date of the execution of this agreement, no further information is needed, and the County will accept a 'will serve' letter from the District that it is ready, willing and able to provide a customer with water service as adequate for purposes of the required review under the New Mexico Subdivision Act, the Zoning Enabling Act, the Santa Fe County Growth Management Plan, and the Santa Fe County Land Development Code, without further technical review or inquiry. The County may extend this procedure beyond three years if it finds that the procedure is consistent with its responsibilities.

3. The County recognizes that the District has the authority to extend the boundaries of its Service Area to serve new customers outside of its current Service Area boundaries. If a potential new customer outside of the current District Service Area but within two miles of the District's current Service Area boundaries requests service from either party, the parties agree to consult together and mutually agree whether the potential customer will be served by the County or the District.
4. The County and the District agree to work towards a subsequent agreement whereby the County provides the District with water from the Buckman Direct Diversion project to assist the District in times of drought or mechanical failure or as otherwise agreed by the parties, on terms specified in the subsequent agreement.
5. The County and the District agree to work together from time to time on other mutually beneficial agreements for infrastructure improvement projects, service boundary expansion, system operations and other improvements on terms specified in subsequent or separate agreements.
6. This agreement shall be perpetual. This agreement may also be amended from time to time, in writing, by agreement of the parties.

IN WITNESS WHEREOF the parties have executed this Memorandum of Understanding as of the dates documented below.

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

By: Liz Stefanics 10/9/12
Liz Stefanics, Chair Date

ATTEST:

Valerie Espinoza by VT

Valerie Espinoza, County Clerk

Approved as to form:

[Signature]

Stephen C. Ross, County Attorney



**THE BOARD OF DIRECTORS OF
THE ELDORADO WATER AND SANITATION DISTRICT**

By:

[Signature]

James Jenkins, EAWSD Board President

9-7-12

Date

ATTEST:

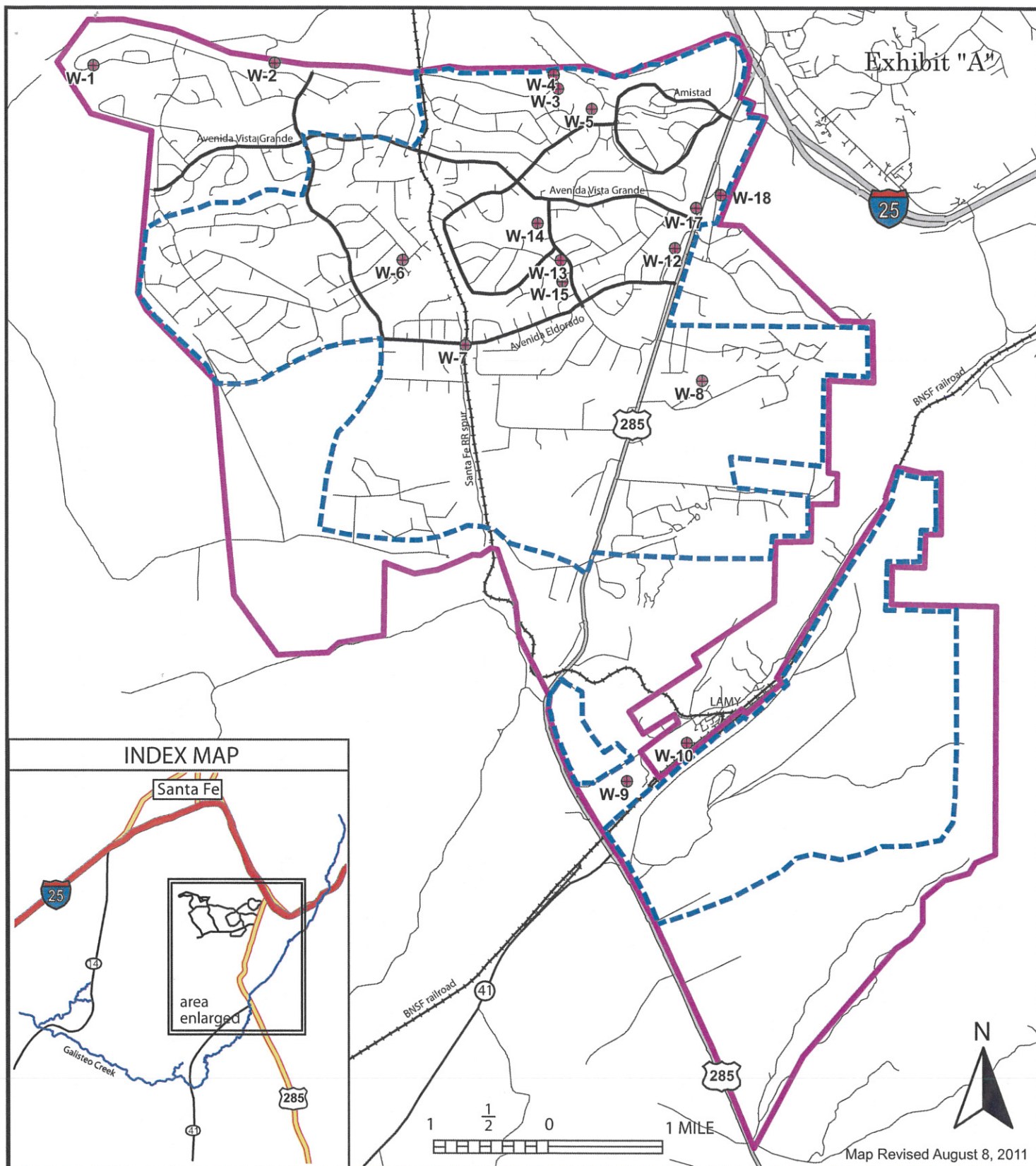
[Signature]

Stephen Wust, Ph.D., EAWSD Board Secretary

Approved as to form:

[Signature]

Catherine Robinson, EAWSD Board Attorney



LEGEND

- W-1 ● EAWSD Wells (with well numbers)
- ▭ Boundary of EAWSD Service Area as of September 2010
- ▭ EAWSD District Boundary as of September 2010

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